

IN THE SENATE

SENATE BILL NO. 1269

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-3608, IDAHO CODE, TO PROVIDE THAT  
THE ASSOCIATION MAY PROVIDE CLAIMS HANDLING SERVICES TO RUN-OFF INSUR-  
ERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-3608, Idaho Code, be, and the same is hereby  
amended to read as follows:

41-3608. OBLIGATIONS AND POWERS OF ASSOCIATION. (1) The association  
shall:

(a) Be obligated to pay covered claims existing prior to the order of  
liquidation arising within thirty (30) days after the order of liquida-  
tion, or before the policy expiration date if less than thirty (30) days  
after the order of liquidation, or before the insured replaces the pol-  
icy or causes its cancellation, if he does so within thirty (30) days of  
the order of liquidation. Such obligation shall be satisfied by paying  
to the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a  
worker's compensation insurance coverage;

(ii) An amount not exceeding ten thousand dollars (\$10,000) per  
policy for covered claim for the return of unearned premium;

(iii) An amount not exceeding three hundred thousand dollars  
(\$300,000) per claim for all other covered claims.

(b) In no event shall the association be obligated to pay a claimant an  
amount in excess of the obligation of the insolvent insurer under the  
policy or coverage from which the claim arises.

Notwithstanding any other provision of this chapter, a covered claim  
shall not include any claim filed with the association after the earlier  
of: (i) eighteen (18) months after the date of the order of liquidation,  
or (ii) the final date set by the court for the filing of claims against  
the liquidator or receiver of an insolvent insurer and shall not include  
any claim filed with the association or a liquidator for protection af-  
forded under the insured policy for incurred-but-not-reported losses.  
Any obligation of the association to defend an insured shall cease upon  
the association's payment by settlement releasing the insured or on a  
judgment of an amount equal to the lesser of the association's covered  
claim obligation limit or the applicable policy limit.

(c) Be deemed the insurer to the extent of its obligation on the covered  
claims and to such extent shall have all rights, duties, and obligations  
of the insolvent insurer as if the insurer had not become insolvent in-  
cluding, but not limited to, the right to pursue and retain salvage and  
subrogation recoverable on paid covered claim obligations.

(d) Assess member insurers separately for amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance covered by the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance covered by the account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any one (1) year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association in the account, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it deems reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account.

(e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. The association shall have the right to appoint or substitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility

1 while handling claims on behalf of the association and shall pay the  
2 other expenses of the association authorized by this chapter.

3 (2) The association may:

4 (a) Employ or retain such persons as are necessary to handle claims and  
5 perform other duties of the association.

6 (b) Borrow funds necessary to effect the purposes of this chapter in ac-  
7 cord with the plan of operation.

8 (c) Sue or be sued, and such power to sue includes the power and right  
9 to intervene as a party before any court that has jurisdiction over the  
10 insolvent insurer as defined by this chapter.

11 (d) Negotiate and become a party to such contracts as are necessary to  
12 carry out the purpose of this chapter.

13 (e) Perform such other acts as are necessary or proper to effectuate the  
14 purpose of this chapter.

15 (f) Refund to the member insurers in proportion to the contribution of  
16 each member insurer that amount which, in the opinion of the board of di-  
17 rectors, will not be needed for the purposes of this chapter within two  
18 (2) years from the date the association receives the refund from the re-  
19 ceivership.

20 (g) Subject to approval by the director, provide claims handling ser-  
21 vices to any run-off insurer, provided the association expenses related  
22 to such services are fully reimbursed. Normal defenses applicable to  
23 guaranty fund handling of covered claims shall not apply to run-off  
24 claim handling and no guaranty fund assets shall be used for run-off  
25 claim or expense payment. There shall be no liability on the part of,  
26 and no cause of action of any nature shall arise against, any member  
27 insurer, the association or its agents or employees, the board of direc-  
28 tors or any person serving as a representative of any director for any  
29 action taken or any failure to act by them in the performance of their  
30 activities under the provisions of this paragraph. For purposes of this  
31 paragraph, "run-off insurer" means a property and casualty insurer that  
32 has:

33 (i) Total adjusted capital under risk-based capital requirements  
34 in an amount less than the authorized control level risk-based  
35 capital as defined in section 41-5401(11)(a), Idaho Code, and  
36 has indicated that it will cease writing new insurance policies,  
37 either as part of its corrective action plan or pursuant to being  
38 placed under regulatory control; or

39 (ii) Total adjusted capital under risk-based capital re-  
40 quirements in an amount less than the mandatory control level  
41 risk-based capital as defined in section 41-5401(11)(c), Idaho  
42 Code, and that has not been placed into liquidation pursuant to  
43 sections 41-3317 and 41-3318, Idaho Code.